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UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

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PATRICK EDWARD SMRZ,  
Plaintiff,

CIV 04-4015

-vs-

THE PEOPLE OF THE STATE OF  
SOUTH DAKOTA,

Defendant.

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ORDER DENYING MOTION FOR  
DECLARATORY JUDGMENT

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Pending before the Court is plaintiff Patrick Smrz's Motion for Declaratory Judgment, doc. 33, and his Motion to Voluntarily Withdraw the Motion for Declaratory Judgment, doc. 38.

**BACKGROUND**

Smrz filed a *pro se* Complaint, entitled "Notice of Appeal," alleging that a South Dakota court terminated his parental rights in violation of his Constitutional right to due process. (Doc. 1.) The allegations in Smrz's Complaint sufficiently stated a violation of his Constitutional rights<sup>1</sup>, but Smrz sued a party with immunity and failed to indicate what type of relief he sought. The Court directed him to file an Amended Complaint "naming the proper party or parties and stating the relief that he is seeking from each." (Doc. 5.) This information was necessary for the Court to conduct the initial screening pursuant to 28 U.S.C. § 1915(e)(2)(B).

Smrz timely filed an Amended Complaint indicating that he sought control over the placement of his children and an abuse and neglect hearing in which he could participate and be represented by counsel. (Doc. 7.) On page two of his Amended Complaint, Smrz asked this Court

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<sup>1</sup>Smrz alleged that he did not receive timely notification of the termination proceedings, and that he was denied an opportunity to be present and represented by counsel at the proceedings.

to "remand this case back to the South Dakota District Court. . . ." (*Id.*) He named as defendants John Doe, Jane Doe, and Tammy Harper, employees of the Department of South Dakota Health and Welfare. Smrz did not explain how the individuals he named as defendants were responsible for failing to give him timely notice and an opportunity to be heard at the hearing terminating his parental rights, or how they were responsible for any other perceived constitutional violations. In addition, his Amended Complaint was silent as to the constitutional violations that Smrz had alleged in his initial Complaint. Finding the Amended Complaint insufficient to state a claim under 28 U.S.C. § 1915(e)(2)(B), the case was dismissed. (Doc. 16.) Subsequently, Smrz filed a Motion for Relief from Judgment. (Doc. 19.) That motion was denied by Order issued on November 10, 2004. (Doc. 25.) On appeal, the Eighth Circuit affirmed this Court's decision. (Doc. 30.) Seven months later, Smrz filed the pending motion for a declaratory judgment.

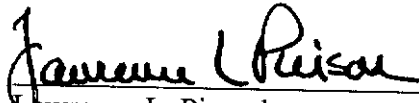
#### DISCUSSION

In his motion for declaratory relief, Smrz is asking the Court to declare void the state court proceedings that terminated his parental rights. This is another of way of seeking essentially the same relief which was denied by earlier Orders of this Court. Apparently Smrz came to realize that such relief cannot be granted here, and he appropriately filed the motion to withdraw the motion for declaratory relief. Accordingly,

IT IS ORDERED that the Motion for A Declaratory Judgment (doc. 33) is denied, and the Motion to Voluntarily Withdraw Motion (doc. 38) is granted.

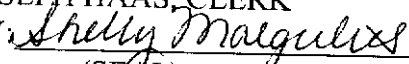
Dated this 4th day of January, 2007.

BY THE COURT:

  
Lawrence L. Piersol  
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY:   
(SEAL) DEPUTY